

**BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF THE
IMPLEMENTATION OF ACT 464 OF
2019 AND THE MODIFICATION OF
NET METERING TARIFFS**

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DOCKET NO. 19-055-U

**GENERAL STAFF'S MOTION TO IMPLEMENT ACT 464 OF 2019, TO
MODIFY NET METERING TARIFFS, AND FOR AN EXPEDITED
PROCEDURAL SCHEDULE**

Comes now the General Staff ("Staff") of the Arkansas Public Service Commission ("Commission") and for its Motion to Implement Act 464 of 2019, to Modify Net Metering Tariffs, and for an Expedited Procedural Schedule ("Motion") states as follows:

1. Effective July 24, 2019, Act 464 of 2019 amended the Arkansas Renewable Energy Development Act of 2001 ("AREDA"), Arkansas Code § 23-18-601 *et seq.*, to remove "certain legal constraints and uncertainties that were present under the previous net-metering law" in Arkansas.¹

2. However, Act 464 does not change the obligation of utilities under Arkansas Code § 23-18-604(a) to "allow net-metering facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions." As the Commission noted, "a number of provisions in Act 464 appear to be either noncontroversial or not subject to debate (e.g., provisions that authorize third-party leasing of net metering facilities; changing the threshold size of net-metering facilities that are exempted from compliance filings with the Commission from 300 kilowatts (kW) to 1,000 kW; allowing the Commission to approve certain non-residential net-metering

¹ APSC Docket No. 16-027-R, Order No. 22, p. 3.

facilities up to 20,000 kW under certain circumstances; and including as a net-metering facility an energy storage device that is configured to receive electric energy solely from a net-metering facility).”² The black letter provisions of Act 464 should be given effect in existing net-metering tariffs as soon as possible.

3. Importantly, Act 464 does not require a change in the current net-metering rate structures currently established by the Commission.

4. As directed by Commission Order No. 22 in Docket No. 16-027-R, Staff reconvened the Net-Metering Working Group (“NMWG”) “to engage in collaborative processes . . . to further address rate issues and other issues raised by the passage of Act 464 and explore whether the Parties [to the NMWG] can converge on an agreement for rate structure and other amendments to the NMRs and file an agreed-upon set of Net-Metering Rules (“NMRs”) and a Strawman for other issues by September 17, 2019.”³ However, despite the Commission’s guidance regarding the noncontroversial nature of significant aspects of Act 464, the NMWG has not been able to achieve unanimous agreement on any of the NMRs.⁴ Therefore, a “NMWG Filing of Agreed-upon Rules” cannot be provided by the procedural schedule filing date of September 17, 2019. As a result, a markup of the NMRs will be filed as part of the contested issues Strawman which, pursuant to the procedural schedule in Docket No. 16-027-R, will not be considered at a hearing until December 5, 2019.

² *Id.* at 2. Act 464 increased the threshold capacity only for non-residential net-metering facilities. Act 464 did not make any changes to the threshold capacity for residential net-metering facilities.

³ *Id.* at 3-5.

⁴ Areas of disagreement ranged from a proposal to completely re-write the NMRs in their entirety to the contest of provisions that the Commission indicated in Order No. 22 were not controversial or subject to debate.

5. Additional concerns have emerged which have further prompted the Staff's recommendation that the Commission take action at this time. First, certain jurisdictional utilities have expressed that they will delay the implementation of Act 464's public policy by *only* acting in accordance with their existing tariffs in instances where there is a conflict between Act 464 and their existing tariff or the NMRs. Second, upon information and belief, Staff states that there are unwarranted delays in both accepting and processing interconnection requests, including most recently a utility's apparent refusal to process a Preliminary Interconnection Site Review Request during the pendency of the current proceeding to revise the NMRs.

6. Because Act 464 became effective on July 24, 2019, and therefore embodies current Arkansas law, the "removal of certain legal constraints and uncertainties that were present under the previous net-metering law"⁵ should be implemented without delay. Further, the *prompt* interconnection of net-metering facilities is important because of the year-end reduction of the federal Investment Tax Credit ("ITC") designed to foster the financing of net-metering facilities. The ITC will step down from thirty percent (30%) in 2019 to twenty-six percent (26%) in 2020, thereby reducing the incentive for industry to bring economic growth and jobs to the state.

7. Currently, certain portions of the tariffs on file with the Commission are in conflict with the statutory language of Act 464. Filed contemporaneously herewith are the Supporting Testimony of Clark D. Cotten and Exhibit CDC-1 which reflect Staff's

⁵ *Id.* at 3.

proposed revisions to the existing net-metering tariff to implement the black letter provisions of Act 464.

8. Staff respectfully submits that the black letter changes required by Act 464 should be incorporated into existing tariffs by the Commission without delay. Any further delay in the incorporation of Act 464 into existing tariffs will frustrate the intent of the General Assembly. With respect to matters for determination by the Commission under Act 464, including changes to the NMRs and consideration of rate structure options for certain types of customers, the Commission has established a process and procedural schedule for addressing those issues with input from interested parties in Docket No. 16-027-R. However, the existing NMRs were not repealed and are still in effect. In the event of conflict between the existing NMRs and Act 464, Act 464 should control.

9. Arkansas Code § 23-18-604(b)(1) states that “[f]ollowing notice and opportunity for public comment,” the Commission shall establish conditions for net metering. In order to implement the intent of Act 464 in this year, it has become necessary for the Commission to promptly grant the relief requested by this Motion.

10. For the foregoing reasons Staff respectfully requests that the Commission order each jurisdictional electric utility with a net-metering tariff: (1) to file a revised net-metering tariff in this docket that conforms with Act 464 by incorporating the revisions contained in Exhibit CDC-1 within seven (7) days of the Commission’s order; (2) to follow the mandate of pre- and post-Act 464 law under Arkansas Code § 23-18-604(a) to “allow net metering facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions;” and (3) to fully comply with both

Act 464 and the existing NMRs, including processing Preliminary Interconnection Site Review Requests and the Standard Interconnection Agreement for Net-Metering Facilities, provided that upon any conflict between the NMRs and Act 464, Act 464 controls.

11. Staff further requests that the Commission expedite this proceeding by establishing a shortened intervention deadline pursuant to RPP 4.02(a)(2)(A) and issuing an expedited order pursuant to the following procedural schedule:

(A) Intervention Petition with Response to Motion,⁶ Public Comment Period, and Responses to Motion due by noon Friday, September 20, 2019; and

(B) Staff Reply due by noon Friday, September 27, 2019.

Wherefore, Staff respectfully requests the Commission grant the relief described herein; and for all other relief the Commission deems appropriate.

Respectfully submitted,

GENERAL STAFF OF THE ARKANSAS
PUBLIC SERVICE COMMISSION

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⁶ Staff proposes that due to the expedited relief requested, any Intervention Petition include a proposed response to this Motion.

CERTIFICATE OF SERVICE

I, Daniel L. Parker, hereby certify that a copy of the foregoing has been delivered by electronic mail to all jurisdictional electric utilities with net metering tariffs on September 13, 2019.

/s/ Daniel L. Parker
Daniel L. Parker